

DOCKET NO: 253028US6PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
YOICHIRO SAKO, ET AL. : EXAMINER: CHU, K.
SERIAL NO: 10/500,151 :
FILED: JULY 12, 2004 : GROUP ART UNIT: 2627
FOR: RECORDING MEDIUM, :
RECORDING METHOD, AND
RECORDING APPARATUS

APPEAL BRIEF

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

This is an appeal from the decision of the Examiner dated September 24, 2007 which finally rejected Claims 35, 38, 39, 42-44, and 46 in the above-identified patent application. A Notice of Appeal was timely filed on November 26, 2007.

I. REAL PARTY-IN-INTEREST

The real party-in-interest is Sony Corporation.

II. RELATED APPEALS AND INTERFERENCES

Appellants, Appellants' legal representative, and the assignees are aware of no prior or pending appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 35, 38, 39, 42-44, and 46 have been finally rejected and form the basis for this appeal. Claims 36, 37, 40, 41, and 45 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten into independent form including all of the limitations of the base claim and any intervening claims. Claims 1-34 are canceled. Appendix VIII includes a clean copy of Claims 35-46.

IV. STATUS OF AMENDMENTS

No amendments after final rejection have been filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 35 is directed to an optical recording medium including a first and second type of predetermined subcode data repetitively recorded in a circumferential direction at substantially regular physical intervals of the recording medium, including data for identifying the recording medium. (page 6, lines 6-8, page 8, lines 12-19, and Figure 1.) The intervals at which the first and second type of predetermined subcode data are recorded correspond to a linear velocity for accessing the medium via the recording/reproducing device. (page 27, line 8 to page 28, line 14)

Independent Claim 43 is directed to a recording/reproducing device including a read/write unit 90 configured to access a first and second type of predetermined subcode data repetitively recorded in a circumferential direction at substantially regular physical intervals of the recording medium, including data for identifying the recording medium. (page 6, lines 6-8, page 8, lines 12-19, page 34, lines 11-20, and Figure 19.) The intervals at which the first type of predetermined subcode data are recorded correspond to a linear velocity for accessing the medium. (page 27, line 8 to page 28, line 14)

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The ground of rejection to be reviewed on appeal is:

(a) whether Claims 35, 38, 39, 42-44 and 46 are anticipated under 35 U.S.C. §102(b) by Maeda et al. (U.S. Patent No. 5,870,375, hereinafter “Maeda”).¹

VII. ARGUMENTS

Claims 35, 38, 39, 42-44 and 46 are not anticipated by Maeda

Claim 35 recites, *inter alia*, an optical recording medium configured to provide data structured per sub-code frame for cooperating with a recording/reproducing device to provide managed access to the structured data, and, having two or more groups of sub-code frames spirally or concentrically record thereon, including:

a first and second type of predetermined subcode data repetitively recorded in a circumferential direction at ***substantially regular physical intervals of the recording medium, including data for identifying the recording medium***, the intervals at which the first and second type of predetermined subcode data are recorded ***corresponding to a linear velocity for accessing the medium*** via the recording/reproducing device. (emphasis added)

The outstanding Office Action cited header f1 of Maeda as “a first and second type of predetermined subcode data repetitively recorded” as recited in Claim 35.² Column 10, lines 15-38 of Maeda describe that header f1 includes VFO fields g1 and g6, AM fields g2 and g7, flag fields g3 and g8, second address data fields g4 and g9, and CRC fields g5 and g10. However, Maeda does not describe any part of header f1 as including “data for identifying the recording medium.” The outstanding Office Action apparently cited flag fields g3 and g8 as describing “data for identifying the recording medium.”³ However, Maeda only describes that flag fields g3 and g8 describe “property information and the like” of ***the second address***

¹It is noted that Claims 36 to 39 and 41 are objected to. This formal objection will be addressed after the present appeal is resolved.

²See the outstanding Office Action at page 3, lines 4-21.

³See the outstanding Office Action at page 3, lines 15-17.

data, and does not describe that flag fields g3 and g8 describe “data for identifying the **recording medium**.” Accordingly, header f1 of Maeda cannot be “a first and second type of predetermined subcode data repetitively recorded” as recited in Claim 35.

Further, it is respectfully submitted that Maeda does not teach or suggest “the intervals at which the first and second type of predetermined subcode data are recorded corresponding to a linear velocity for accessing the medium via the recording/reproducing device” as recited in Claim 35. Although the cited portion of Maeda does describe that data is read off the disc using the constant linear velocity method,⁴ this does not explicitly or inherently **require** that data is repetitively recorded at intervals corresponding to a linear velocity for accessing the medium. Moreover, to the extent an inherency rejection is being asserted by the outstanding Office Action, no evidence or rationale has been provided proving that the above feature is necessarily present in the cited reference. Accordingly, it is respectfully submitted that header f1 of Maeda cannot be “a first and second type of predetermined subcode data repetitively recorded in a circumferential direction at **substantially regular physical intervals** of the recording medium, including data for identifying the recording medium, **the intervals** at which the first and second type of predetermined subcode data are recorded **corresponding to a linear velocity for accessing the medium**” as recited in Claim 35.

Consequently, it is respectfully submitted that Claims 35 (and Claims 36-42 dependent therefrom) patentably distinguish over Maeda.

Likewise, independent Claim 43 recites subject matter substantially similar to what is recited in Claim 35, albeit in a different statutory class, a recording/reproducing device. Thus, Claim 43 (and Claims 44-46 dependent therefrom) are also patentable over Maeda for at least the reasons described above with respect to Claim 35.

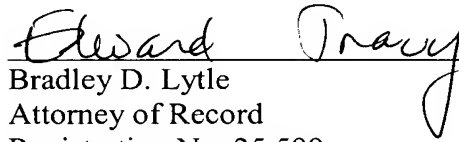
⁴See Maeda, column 10, lines 55-60.

Conclusion

It is respectfully requested that the outstanding rejections be REVERSED.

Respectfully submitted,

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MAIER & NEUSTADT, P.C.

A handwritten signature in cursive script, reading "Edward Tracy", is written over a horizontal line.

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VIII. CLAIMS APPENDIX

Claims 1-34 (Canceled).

Claim 35: An optical recording medium configured to provide data structured per sub-code frame for cooperating with a recording/reproducing device to provide managed access to the structured data, and, having two or more groups of sub-code frames spirally or concentrically recorded thereon, comprising:

a first and second type of predetermined subcode data repetitively recorded in a circumferential direction at substantially regular physical intervals of the recording medium, including data for identifying the recording medium, the intervals at which the first and second type of predetermined subcode data are recorded corresponding to a linear velocity for accessing the medium via the recording/reproducing device.

Claim 36: The recording medium according to Claim 1, wherein the second type of predetermined subcode data is expressed on the recording medium as pre-pressed pits and lands which serve as a component of a unique disc identifier (UDI) which identifies a mastering apparatus.

Claim 37: The recording medium in accordance with Claim 1, wherein the first type of predetermined subcode data is expressed on the recording medium as a variance in reflectance of a reflective film of the recording medium, the variance being a component of a unique disc identifier (UDI) to identify the recording medium.

Claim 38: The recording medium in accordance with Claim 1, wherein the recording medium is a disc encoded with error detection and error correction data.

Claim 39: The recording medium in accordance with Claim 1, wherein the subcode is provided in a compact disc (CD) format.

Claim 40: The recording medium in accordance with Claim 39, wherein the repetitive recording is five repetitions at intervals of twelve sub-code frames.

Claim 41: The recording medium of Claim 1, wherein the medium is rectangular and the second type of predetermined subcode data is arranged on one side of the medium at regular intervals.

Claim 42: The recording medium of Claim 39, wherein the first and second type of predetermined subcode data are recorded in a Q channel of the two or more groups of sub-code frames.

Claim 43: A recording/reproducing device configured to access a recording medium which includes data structured per sub-code frame, and, having two or more groups of sub-code frames spirally or concentrically recorded thereon, comprising:

a read/write unit configured to access a first and second type of predetermined subcode data repetitively recorded in a circumferential direction at substantially regular physical intervals of the recording medium, including data for identifying the recording medium, the intervals at which the first type of predetermined subcode data are recorded corresponding to a linear velocity for accessing the medium.

Claim 44: The recording/reproducing device according to Claim 43, wherein the recording/reproducing device identifies the second type of predetermined subcode data as

pre-pressed pits and lands.

Claim 45: The recording/reproducing device medium in accordance with Claim 43, wherein the read/write unit writes the first type of predetermined subcode data to the recording medium as a variance in reflectance of a reflective film of the recording medium to identify the recording medium.

Claim 46: The recording/reproducing device in accordance with Claim 45, wherein the first type of predetermined subcode is provided to a Q channel of the two or more groups of sub-code frames, the sub-code frames being provided in a compact disc (CD) format.

IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.